mind, which persons were felt both to have committed horrible acts, and who had escaped punishment for such acts.

The fact that this treatment is visited solely upon former President Nixon, where whatever justification for the publication of his papers exists as to him exists equally as to other public officials, including Congressmen, is evidence of its individual, punitive aspect. Indeed, specifically designating an individual as an object of supposedly regulatory legislation is one of the indications of a bill of attainder. *See United States* v. *Brown*, 381 U.S. at 447.

Thus, the passage of S. 4016 in this climate would raise serious questions as to its legitimate purpose and would instead subject it to attack as a bill of attainder.

VII. CONCLUSION

S. 4016, which was conceived and developed in haste following the pardon of Mr. Nixon, is fraught with a number of substantial Constitutional infirmities. The bill is of extremely dubious validity.

Mr. ERVIN. I wish to say that I was opposed to the House-passed amendments.

The PRESIDING OFFICER. The initial 2 minutes have expired.

Mr. ERVIN. May I have 1 more minute?

As a realist, I have had to compromise with myself by rejecting the worst House amendment and concurring in the least harmful. I think that the business of establishing study commissions for things that Congress ought to study itself is not very wise.

Mr. President, has final action been taken?

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate return to executive session.

Mr. GRIFFIN. Mr. President, I object.

I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold?

Mr. GRIFFIN. Yes.

Mr. ROBERT C. BYRD. Mr. President, the Senate never went into legislative session. The request was "as in legislative session."

The PRESIDING OFFICER. The Senator from North Carolina did ask unanimous consent that the Senate go into legislative session.

Mr. ROBERT C. BYRD. I am sorry; I did not understand that.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Nevada yield me 30 seconds?

Mr. CANNON. I yield.

NUCLEAR REGULATORY COMMISSION—NOMINATION REFERRED TO COMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nomination of Mr. William A. Anders, of Virginia, to be a member of the Nuclear Regulatory Commission, be no longer held at the desk, but that it be referred to the appropriate committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF NELSON A. ROCKEFELLER TO BE VICE PRESIDENT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of Nelson A. Rockefeller to be Vice President of the United States.

Mr. GOLDWATER. Mr. President, the nomination of Nelson Rockefeller to be Vice President has presented me with one of the most difficult decisions I have ever confronted as a Member of the Senate.

Because of this, I ask unanimous consent to place in the RECORD a letter I sent to President Ford explaining why I cannot support his nominee.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., December 9, 1974.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Party loyalty is important to me. I have always tried to support the proposals and policies of the Republican Presidents who have held office during my terms in the United States Senate. I appreciate all your reasons for choosing Nelson A. Rockefeller to be your Vice President.

I have great admiration for Governor Rockefeller. He is a man of wide experience and many talents. He has conducted himself magnificiently during the drawn-out confirmation hearings before both the Senate and House Committees.

When I met with Mr. Rockefeller after you announced your decision I told him that I expected to be able to support his confirmation. I assured him that I had forgiven him for his non-support of my candidacy in 1964, and that I harbored no resentment against anyone for what happened so long ago.

My inclination then was to cast my vote for confirmation, but recent disclosures have forced me to re-examine that earlier decision.

It is now apparent to me that Mr. Rockefeller did in effect use his own personal money to accomplish the purchase of political power. I am not questioning Mr. Rockefeller's motives nor am I suggesting that he made any improper use of the political leverage available to him as a result of his gifts and loans to his political associates.

In my opinion, there exists in this country a strong suspicion that the tremendous financial power of the Rockefeller family might have a corrupting influence on the political process. The support for Mr. Rockefeller in Arizona is very low. I have received some 4,000 communications from Republicans and not more than 20 percent have expressed support for Mr. Rockefeller.

My decision in this matter is made even more difficult by the fact that when I approached Mr. Rockefeller, soliciting funds from the Rockefeller Foundation to assist the Arizona Historical Foundation, of which I am president, he told me that he had nothing to do with the Foundation, but made a personal contribution of $5,000. It is my understanding that he also made a personal contribution to create a so-called "Goldwater Chair" at one of the Arizona state universities. I feel that in this letter to inform you of my decision I would be derelict in my duty to my conscience if I did not mention these two examples of Mr. Rockefeller's generosity.

Mr. President, I am torn between my desire to abide by your wishes and my feelings that our nation and our party will be better served by the selection of a younger man—one who would not carry the burden of suspicion which is clearly in the public mind regarding the power of the Rockefeller fortune.

I have concluded that I cannot vote to confirm your present choice for Vice President.

Respectfully,

BARRY GOLDWATER.

Mr. HELMS. Mr. President, in previous statements I have addressed myself to some basic issues which are inherent in the nomination of Mr. Rockefeller, and perhaps would arise with no other man. I have discussed the controversy which surrounds him and his interconnection with the powerful family dynasty in part I of this series. In part II, I discussed the case of L. Judson Morhouse, and how Mr. Morhouse was central to Mr. Rockefeller's early political ambitions and success, a fact which seemed to blind Mr. Rockefeller to certain traits in the character of Mr. Morhouse which ought to have been clearly apparent to any man of ordinary judgment. Instead of taking steps to investigate fully and insure that the laws of New York were impartially enforced, no matter what the embarrassment to his administration and to Mr. Rockefeller's Presidential ambitions, Mr. Rockefeller tried to buy Mr. Morhouse's honesty through gifts and insider deals, apparently failing to realize that virtue is not a commodity to be bought and sold.

It is a fair conclusion, therefore, that Mr. Rockefeller unwittingly corrupted Mr. Morhouse's sense of values with his lavish gifts, and directly contributed to the personal tragedy of his top political aide. Indeed, the physical deterioration which accompanied the collapse of Mr. Morhouse's career may well have been an outward sign of the moral sickness which festered in his soul. To all of these moral issues, Mr. Rockefeller seems impervious. His repudiation of Mr. Morhouse before the Rules Committee can scarcely be viewed as other than a distortion of history that seems intended to mislead the Senate about his relationship with a man upon whom he conferred benefits ultimately worth at least $900,000. He is obviously insensitive toward the inverted morality of making gifts to keep a man out of "temptation," and shows no inclination toward assuming any responsibility for contributing to that man's fall. Finally, his insistence that the corrupt transaction between Morhouse and the racetrack crowd took place a month later than the facts will allow, and in a con-

in the course of which discussion with intimates and friends often plays an integral part *See United States* v. *Nixon,* 42 U.S.L.W. at 5245 & n. 17.

It has been long recognized that enforced public exposure of such inherently private aspects of "free speech" has a stifling effect. Courts have not ruled on a First Amendment challenge to forced revelation of the unedited stream of individual's comments, public and private for an extended period of time. They have, however, dealt with what must be considered the less severe intrusion of an attempt to discover a simple list of the persons who belong to a political organization In doing so, they have found the privacy of political association indispensable to the viability of the system of free thought and speech established under our Constitution. *NAACP* v. *Alabama,* 375 U.S. 449 (1958).

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"It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's association." [375 U.S. at 462] *See* also *Shelton* v. *Tucker,* 364 U.S. 479 (1960).

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As stated by Justice Brennan, ". . . inhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government." *Lamont* v. *Postmaster General,* 381 U.S. 301, 309 (1965). The same principle must be applied to legislative attempts to monitor any man's daily political expression *Cf. Eastern Railroad Presidents Conf.* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961). The "chilling effect" of the knowledge that every political utterance or writing, whether tentative or experimental, will be exposed to public scrutiny would be an intolerable inhibition upon any man's thought and political development.

Yet this would be precisely the effect of S. 4016. It seeks to obtain and make available to the public the voluntarily-kept, daily record of a man's tenure in the Presidency. Were the subject anyone other than the former President, were the times any other than these, the extent to which such a scheme undermines the free thought and speech protected by the First Amendment would be obvious.

While the theory that every thought of the man occupying the White House is legitimate public business has initial appeal, it is at war with the fact that development of presidential political thought develops no differently from that of any man and is inhibited by the same factors.

The electorate has the right, and indeed the political duty, to monitor the conduct of public officials. It is a duty, however, to monitor the decision made, not the option considered. There is nothing in the Constitution, or in the political theory which it embodies, which argues that officialdom must live in a goldfish bowl. *Cf. E.P.A.* v. *Mink,* 410 U.S. 73 (1973); *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena,* 40 F.R.D. 318 (D.D.C. 1966). Rather it is anticipated that those elected to public office will develop and modify their political beliefs and understandings in the same manner as private citizens, that is, through both public debate and private conference.

Although in the case of executive officials the constitutional interest guaranteed by the First Amendment is similar to that encompassed by the term "Executive Privilege," and the two in this context are complementary, it is separable in both root and application. While Executive Privilege has its foundation in practical necessity, behind it rests the more general personal right of the chief executive as an individual to think and talk freely among his intimates. Knowledge that notes and tape recordings made for personal use can, by whatever means, be condemned and published will inevitably stunt this process. A President as much as any man is guaranteed freedom from such constraint. As stated by Judge Learned Hand,

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[The First Amendment] presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have stated upon it our all. *United States* v. *Associated Press* (52 F. Supp, 362, 372 (S.D.N.Y., 1943).

* * * * *

To the extent that evidence of criminal wrongdoing is suspected, the Constitution provides formal judicial mechanisms for the discovery of relevant material. *United States* v. *Nixon, supra.* If legislative investigation is in order, relevant material can there too be obtained. But the wholesale acquisition of a man's tape recordings and notes, for the simple satisfaction of public curiosity, however great, is inimical to the First Amendment's guarantees. While the material sought is of unusual interest to the public, it is not, and was not when compiled, public property. If it can be taken from any man for the purposes of public dissemination, it can be taken from every man. If it can be taken from a former President, our system of political development through free expression is stifled at precisely the point at which it is supposed to culminate.

V. FIFTH AMENDMENT

Although President Ford pardoned Richard Nixon for all crimes committeed during Mr. Nixon's tenure as President, the President's pardon power under Art. II, § 2 runs only to "offenses against the United States." Thus, Mr. Nixon remains subject to state criminal prosecution for any crime committed during his tenure as President. For example, allegations have been publically aired, although they are as yet unsubstantiated, that the former President was involved in criminal conspiracy and tax evasion punishable under California law.

To the extent that the publication of information involuntarily obtained under the proposed bill will place in the hands of state officials evidence which might tend to incriminate the former President, severe Fifth Amendment questions are raised.

"Whenever the Court is confronted with the question of a compelled disclosure that has an incriminating potential, the judicial scrutiny, in invariably a close one." *California* v. *Byers,* 402 U.S. 424, 427 (1971). Since the Fifth Amendment protects an individual not only against compelled self-incriminatory testimony but also against compelled disclosure of potentially incriminatory private papers, *Boyd* v. *United States,* 116 U.S. 616 (1886), those questions are raised here.

The Supreme Court has held unconstitutional requirements that individuals report potentially incriminating information to the government. *Marchetti* v. *United States,* 390 U.S. 47 (1968); *Grosso* v. *United States* 390 U.S. 62 (1968); *Haynes* v. *United States,* 390 U.S. 85 (1968). The government, of course, has various legitimate needs for private information, and it can, under proper circumstances, require its submission. Constitutionality under the Fifth Amendment, however, requires that the reporting or disclosure requirement not be aimed at a "highly selective group inherently suspect of criminal activities." *California* v. *Byers, supra,* at 430. *See* also *Albertson* v. *SACB,* 382 U.S. 70 (1965). The mechanism the government chooses for attaining involuntary disclosure is, of course, essentially irrelevant to the Fifth Amendment interest involved, so the fact that S. 4016 contemplates condemnation and then public disclosure as opposed to the means used in the cited cases is not important.

With regard to S. 4016, the bill could not be more narrowly confined in terms of selectively. It is aimed at and solely applicable to one man—Richard Nixon.

While most of the cases cited above have involved narrow requests for specific information within certain defined areas, the constitutional infirmity of such statutes is surely not removed by providing that the information forcibly obtained by the government be all encompassing. The problems with such a bill addressed to a single "suspect" individual are augmented rather than decreased.

The extreme breadth of the information sought by S. 4016 renders this bill the type of government fishing expedition which the Fifth Amendment privilege against self-incrimination was originally designed to protect against.

VI. BILL OF ATTAINDER

Article I, Section 9, clause 3, of the Constitution states that no bills of attainder shall be passed. This express prohibition on the power of the Federal government to enact statutes has been broadly interpreted by the courts. Thus, in *Ex parte Garland,* 4 Wall. (71 U.S.) 33 (1867), the Supreme Court struck down a statute which required that attorneys take an oath that they had taken no part in the Confederate rebellion against the United States before they could practice in federal courts. The Court found that "exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct." *Id.* at 377.

In *United States* v. *Lovett,* 328 U.S. 303 (1946), the Court struck down a rider to an appropriations act which forbade the payment of any compensation to three named persons then holding office by executive appointment.

What these cases have in common with each other and with S. 4016 is the use of law-making powers to punish without a trial an individual or small groups of individuals for certain conduct. What constitutes punishment is to be liberally interpreted to effect the remedial purpose of the bill of attainder clause in the Constitution. Thus, denying the ability to practice law before federal courts was punishment, as was withholding person's salaries.

On its face, S. 4016 may not demonstrate a punishing purpose, but such was also true of the statute in *Garland.* Yet no one can deny the punishing effect of S. 4016. The punishment meted out is the baring of Mr. Nixon's most personal papers and conversations to public scrutiny and ridicule. Indeed, in terms of the suffering it will cause, the effect of such punishment seems much greater than that of merely forbidding a lawyer from practicing law before the federal courts, forcing federal employees to find a new job, or forbidding Communists from holding union office, *see United States* v. *Brown,* 381 U.S. 437 (1965). In any case, the damage to reputation and earning capacity is a cognizable effect of the punishment, and are acknowledged as evidence of punishment by the Court. *United States* v. *Lovett,* 328 U.S. at 314.

No doubt the sponsors of S. 4016 are able to recite supposed legitimate bases for the bill, but again each of the laws struck down by the Supreme Court as bills of attainder were defended on the basis that they were exercises of legitimate regulatory powers and not bills of attainder. The Court, however, looked beyond the self-serving justifications for the laws to the motive and underlying purpose of Congress. In each case the Court found an environment where legislation was conceived with specific persons or groups in

teed right of privacy with respect to all persons whose conversations were the subject of the tape recordings to be condemned and made public by the bill.

Section 6 of the bill gives to the Administrator authority to release the tape recordings to the public subject to only three restrictions. These restrictions are: (1) "information relating to the Nation's security shall not be disclosed" (section 6(1)); (2) there shall be no release if "the Office of Watergate Special Prosecution Force certifies in writing that such disclosure or access is likely to impair or prejudice an individual's right to a fair and impartial trial" (section 6 (3)(A)); and (3) there shall be no release "if a court of competent jurisdiction determines that such disclosure or access is likely to impair an individual's right to a far and impartial trial" (section 6(3)(B)).

None of these restrictions serves to protect the right of privacy. Thus, we have virtually unchecked authority in the Administrator to release the tapes. As discussed below, (1) there is a privacy interest in the tapes which is recognized by the courts as constitutionally protected; (2) when Congress legislates so that such a fundamental constitutional right may be affected, it must utilize the narrowest of means to achieve its objectives and cannot leave the protection of the rights to the unrestricted discretion of others; and (3) this bill represents a broad and unchecked grant of authority affecting a fundamental right and therefore is constitutionally impermissible.

A. Right to Privacy—a constitutional right.

There is a right to privacy which has been recognized by the courts in many contexts. Thus, it has been found in the First Amendment, *NAACP* v. *Alabama,* 357 U.S. 449 (1958), in the Fourth Amendment, *Weeks* v. *United States,* 232 U.S. 383 (1914); *Silverthorne Lumber Co.* v. *United States,* 251 U.S. 385 (1920); *Katz* v. *United States,* 389 U.S. 347 (1967), in the Fourth and Fifth Amendments, *Boyd* v. *United States,* 116 U.S. 616 (1886), in the Ninth Amendment, *Griswold* v. *Connecticut,* 381 U.S. 479 (1965). (Goldberg, J., concurring), and under a penumbra of the First, Third, Fourth and Fifth Amendments, *Griswold* v. *Connecticut,* 391 U.S. 479 (1965). *See, generally, Roe* v. *Wade,* 310 U.S. 113, 152–53 (1973).

Concerning the specific material covered by Section 6 of the bill—the tapes—it is clear from the language of the Supreme Court that the conversations of the persons recorded on the tapes are the type of material encompassed by the right of privacy. In *Katz, supra,* the Court stressed that the expectations of persons define the limits of the protection afforded by the Fourth Amendment.

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"What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz* v. *United States,* 389 U.S. at 351–52 (citations omitted).

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It is clear that all persons whose conversations were recorded expected that their conversations would not be made public. Most of those who discussed matters in the executive office were actually unaware that their conversations were being recorded, and as to those who were aware, even they believed that the recordings would be protected from public exposure.

In *Boyd* v. *United States, supra,* the Court gave a swecping definition of the protection afforded under the combined coverage of the Fourth and Fifth Amendments which it derived from the discussion by Lord Camden in *Entick* v. *Carrington and Three Other King's Messengers,* 19 Howell's State Trials 1029 (1765).

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"The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case there before the court with its adventitious circumstances; *they apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life.* It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but *it is the invasion of his indefeasible right of personal security, personal liberty and private property,* where the right has not been forfeited by his conviotion of some public offence—it is the invasion of his sacred right which underiles and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but *any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime to to forfeit his goods, is within the condemnation of that judgment.* In this regard the Fourth and Fifth Amendments run almost into each other." 116 U.S. 630 (emphasis added).

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The making public of the taped conversations of men who believed their confidences were secure would also be a "forcible and compulsory extortion of a man's own testimony", and equally abhorrent to the principles of the Fourth and Fifth Amendments.

The bill's forced disclosure of the tapes dictates another "invasion on the part of the government" into "the privacies of life." The essence of the passage quoted above is that the Fourth and Fifth Amendments protect privacy, and it is the unwarranted interference with that privacy which constitutes the gravamen of the offense, not the particular manner in which the invasion is accomplished or the form in which the privacy interest appears. It would be equally abhorrent for the Congress to order a general invasion of the privacy of the conversations of persons in the executive offices as it was for the King's Messengers, utilizing a general warrant, to invade the privacy of a man's home.

B. Limits on Congressional Relation of Constitutionally Protected Freedom.

As is demonstrated above, the right to privacy is a constitutionally protected freedom. From that follows certain consequences when Congress proposes to take action that many affect that freedom.

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"When certain 'fundamental rights' are involved, the Court held that regulation limiting these rights may be justified only by a 'compelling state interest,' . . . and that legislative enactments must be narrowly drawn to express only legitimate state interests at stake." *Roe* v. *Wade,* 410 U.S. 113, 155 (1973) (citations omitted).

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Although the Court speaks of "state" interests, this appiles equally to Congress legislating the federal area. *Aptheker* v. *Secretary of State,* 378 U.S. 500, 507–09 (1964).

It should be noted that whether the right of privacy derives from the First Amendment, *United States* v. *Robel,* 389 U.S. 258 (1967); *NAACP* v. *Alabama,* 377 U.S. 288 (1964); *NAACP* v. *Button,* 371 U.S. 415 (1963); the Fourth Amendment, *Sanford* v. *Texas,* 379 U.S. 476 1965; *Weeks* v. *United States,* 232 U.S. 383 (1914); the Fifth Amendment, *Aptheker* v. *Secretary of State,* 378 U.S. 500 (1964); the Ninth Amendment or a penumbra of the Amendments, *Roe* v. *Wade,* 410 U.S. 113 (1973); *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); the result is the same—it must be carefully protected against overbroad assertions of authority.

The limitation imposed may be expressed as a restriction of Congressional action to "narrowly drawn" statutes, *Roe* v. *Wade, supra,* or it may be an attack on unfettered discretion bestowed on others. *Kunz* v. *New York,* 340 U.S. 290 (1951); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940). *Cf. Stanford* v. *Texas,* 379 U.S. 476 (1965); *Weeks* v. *United States,* 232 U.S. 383 (1914).

The lesson of all these cases is clear. Fundamental rights are too precious to have their protection left to the unfettered discretion of public officials. The emphasis placed on this rule is illustrated by *Katz* v. *United States,* 389 U.S. 347 (1967), where a search (electronic listening device attached to telephone booth) by law enforcement officers was held improper because there was no *judicial* restraint imposed, even though the conduct did not exceed that which would have been permitted under judicial authorization.

C. Section 6 of S. 4016 is Constitutionally infirm.

From part A of this discussion we see that there is a constitutionally protected privacy interest in the tapes. In part B it was shown that where such a constitutionally protected interest is present, there are certain limitations imposed on legislation. Thus, there may be interference with the privacy right only in the case of a "compelling interest," and the statute must be drawn in the narrowest manner that will further that interest. Delegations of authority must be carefully circumscribed so that the protection of the right is not left to the mercy of the unfettered discretion of a public official. Section 6 falls to meet any of these requirements.

There is first the question of what "compelling" interest is asserted to justify this intrusion into the privacy of the subjects of the tapes. No interest is asserted in the bill. If the interest is that of increasing public knowledge of the events that transpired in the executive offices, then that would not suffice to overcome the privacy interest. *See E.P.A.* v. *Mink,* 410 U.S. 73, 87 (1973), and cases cited therein, regarding the protection of executive discussions.

This brings us to the second point, that whatever valid interests are to be served can be achieved only by a statute that has a narrower focus. Thus if there are valid needs for the information, for example, as evidence in a criminal proceeding, a valid statute could be drawn with that limitation. In fact, it would appear that release in that case would be available regardless of the existence of a statute. *See United States* v. *Nixon,* —— U.S. —— (1974), 42 U.S.L.W. 5237 (decided July 24, 1974); *Nixon* v. *Sirica,* 487 F. 2d 700 (D.C. Cir. 1973). If public information is the goal of the statute then there is already a more narrowly drawn statute on the books. See The Freedom of Information Act, 5 U.S.C. § 552.

Finally, is the requirement of a carefully circumscribed range of discretion. However, the bill as it is written vests almost completely unbridled discretion in the Administrator of General Services to release the tapes. This delegation of authority provides absolutely no protection for privacy rights and thus violates the final requirement for legislation in this area.

IV. FIRST AMENDMENT RIGHTS

It is submitted that the right to unfettered speech is not lost as a consequence of election to high government office. No one would deny a President's right to speak freely in public debate.

Equally as crucial to the principle of free speech as public advocacy is the private formulation of political thought and perspective. This is a process of experiment and development. It is a process of trial and error,

will be prejudiced, or if a court determines that a person's right to a fair and impartial trial would be prejudiced.

The scheme envisaged by S. 4016, therefore, would in effect reverse both *United States* v. *Nixon, supra,* and *Committee for Nuclear Responsibility, Inc.* v. *Seaborg, supra.* This is so first because Section 3(b) directs that materials simply "shall . . . be made available for use in any judicial proceeding. . . . "No provision is made for *in camera* inspection which the Court required in both *Nixon* and *Seaborg.* In fact the clear intent of the language is to do away with that judicially derived requirement. The decision in *Nixon,* however, is constitutionally based, and the requirement of an *in camera* inspection is the result of a careful balancing of competing constitutional interests. 42 U.S.L.W. at 5244–45. This careful balancing is destroyed by S. 4016, and instead all material subpoenaed or otherwise shall be made available. Not only does S. 4016 eliminate the constitutional balancing the Supreme Court required in criminal cases, but it also repudiates the decision in *Seaborg,* a civil case.

In *Seaborg* the District of Columbia Circuit acknowledged the importance of confidentiality in contributing substantially to the effectiveness of government decision-making. 463 F. 2d at 792. Thus, a demand for materials in discovery proceedings would not defeat Executive Privilege, rather the court would inspect the material to see if the privilege was rightfully invoked. If it was, then the material would *not* be produced, even if relevant. *See Committee for Nuclear Responsibility, Inc.* v. *Seaborg,* 463 F. 2d 796, 799 (D.C. Cir. 1971). Thus, S. 4016 not only eliminates the need for *in camera* inspection, but more importantly it overrules the holding that material for which Executive Privilege is rightfully claimed is indeed privileged from production in a civil case. Again S. 4016 attempts to overrule judicial, constitutional decision by statute.

What S. 4016 does to violate Executive Privilege vis-a-vis judicial demands for presidential materials, however, is minor compared to its provision for general public access to all the materials except national security information. To give authority to the Administrator to allow general public access would be to negate Executive Privilege altogether with no concomitant public interest being served in its stead, rather catering only to the gross curiosity of the public. To open all the most personal aspects of any person's life to the public for no legitimate reason is a violation of privacy if nothing else, but when that person is also a President it is a most virulent attack on the Separation of Powers.

In *United States* v. *Nixon, supra,* the Supreme Court unanimously held that presidential communications are "presumptively privileged."

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"The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. 42 U.S.L.W. at 5245.

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"The effect of the presumption is to give the privilege effect until it is challenged by a particularized demand for certain materials. Only then is the presumption overcome. S. 4016's general authority for public access, however, ignores the presumption and provides no opportunity for the invocation of the privilege.

In short, the constitutionally based privilege, acknowledged by the Supreme Court and given effect by lower courts, is to be eliminated by a mere statute. Because executive privilege is constitutionally based, however, it is not subject to repeal or restriction by statutes. Rather statutes must themselves conform to the constitutional right of Executive Privilege.

Even commentators who have expressed a very circumscribed view of Executive Privilege, for example, Raoul Berger, have never suggested that Congress has the power to make each and every presidential paper and conversation public, willy-nilly without regard to the confidences upon which many such conversations and papers were based. Rather, these commentators have merely expressed the opinion that calls by Congress for particular materials necessary for its consideration of legislation or by the judiciary for relevant evidence have a higher public interest than the executive's generalized need for confidential communications. This weighing of the conflicting public interests is precisely the approach that was utilized in *Senate Select Committee* v. *Nixon,* 370 F. Supp. 521, 522 (D. D. C. 1974). *See also Nixon* v. *Sirica,* 487 F. 2d 700, 716–18 (D. C. Cir. 1973). And it was recognized in *Senate Select Committee* v. *Nixon,* 370 F. Supp. at 524, that even Congress' right to demand information by subpoena is limited to proceedings to aid of its legislative function. The conclusion to be drawn, therefore, from both the cases and the commentators is that there is no authority for Congress to require the publication of *all* presidential papers and conversations. Such an action would violate the Doctrine of Separation of Powers and render the President but a servant of Congress.

The United States Court of Appeals for the District of Columbia circuit recognized this full well in *Nixon* v. *Sirica,* 487 F. 2d at 715;

* * * * *

We acknowledge that wholesale public access to Executive deliberations and documents would cripple the Executive as a co-equal branch.

* * * * *

Such could be the result of S. 4016, and for that reason it is of extremely dubious Constitutional validity.

C. Former Presidents' Rights to Invoke Executive Privilege.

The question may be raised whether a former President has the authority to invoke Executive Privilege for materials generated during his presidency, but the rationale behind Executive Privilege and the interest it serves compels the answer that a former President may indeed invoke Executive Privilege in the same manner as a sitting President. This is so because the public interest in the confidentiality of executive discussions requires that those discussions remain confidential indefinitely, not to be publicized as soon as the President leaves office, for if these discussions were to become public after the President leaves office, future discussions with future Presidents would ever after be chilled by the knowledge that within at least eight years those discussions could be public. Viewed another way, the invocation of Executive Privilege is not so much to protect the content of the particular discussions demanded as it is to protect the expectation of confidentiality which enables future discussions to be free and frank. That expectation of confidentiality would be destroyed, and the public interest which it serves with it, if the mere leaving of office would destroy that confidentiality. As early at 1846 this principle was recognized and honored by President Polk. Richardson, *Messages and Papers of the Presidents,* Vol. IV, 433–34.

Harry S. Truman in 1953, having returned to private life, was subpoenaed by a House committee to testify concerning matters that transpired while he was in office. Refusing by letter, he explained that to subject former Presidents to inquiries into their acts while President would violate the separation of powers.

* * * * *

It must be obvious to you that if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occuring while he is President.

The doctrine would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes.

* * * * *

The House committee accepted the letter and did not attempt to enforce the subpoena, indicating perhaps its concurrence with President Truman's claim of privilege.

D. Custody as an Element of the Privilege.

The above discussion has dealt with the constitutional violation of Executive Privilege committed by the disclosure provisions of S. 4016. In addition, however, serious constitutional questions are raised by the mere custody provisions set forth in the bill. That is, while it is clear that Executive Privilege limits the ability of Congress or courts to *disclose* presidential materials, it may also be that Executive Privilege extends to attempts merely to wrest custody of privileged materials from a President or former President even with supposed safeguards against their disclosure.

There are no cases on point or examples of similar actions to answer this question, but the policy considerations are telling to support a claim that privileged materials cannot even be wrested from the custody of the President unless and until a court has determined that they may at least be examined *in camera.*

The policy served by Executive Privilege is advanced most effectively by maintaining the custody of the privileged materials in the person entrusted with the right of asserting that privilege, for without custody he is unable to insure that attempts to gain access to privileged material will be resisted or tested by the courts. Thus, separation of custody from the person responsible for safeguarding the confidentiality of the materials separates the function from the responsibility for it in violation of the most elementary laws of management efficiency. The President or former President is the one individual with the interest in assuring continuing confidentiality; the Administrator has no such interest and therefore is not the proper person to maintain custody. Moreover, the President is the person with the knowledge of what needs to be maintained as confidential and what not.

All these considerations suggest that the President or former President should retain custody of the privileged materials, and that a statute which wrests this privileged material completely from his control violates the Separation of Powers by removing executive material from the executive and by undermining the privilege by separating the custodian of the materials from the defender of the privilege.

III. RIGHT OF PRIVACY

Section 6 of S. 4016 presents another constitutional issue. It would result in an abridgement of the constitutionally guaran-

across the board. However, I fail to comprehend the distorted logic that resulted in the recommendation to create yet another commission to pursue this effort. Two bills on this point are currently pending in this body (S. 2951 by Senators BAYH, RIBICOFF, CHILES and PERCY and S. 4080 by the Senator from Nebraska) and on October 3, we received assurances that hearings would be held on the measures in January or February. Why can not the Congress assume its responsibility to deal with this matter directly? Congress should do its own work on this matter and should not delegate its responsibility to yet another study commission.

In title 2, there is an effort to create a public study commission for the purpose of going into the broad subject of documents of all Members of Congress and other officials, as I understand it, to determine the feasibility of making these documents government property.

Mr. President, as I just stated, we were assured during the debate on this bill that the Committee on Government Operations, early in this coming year and in the new Congress, would consider that subject on its broad basis and that the matter would be treated on a legislative basis, rather than on the basis of creating an extensive, a time-consuming and a natural- and human-resources-expending operation consisting of a study commission.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HRUSKA. While I object to the conclusion of title 2 in the bill, it is not my purpose to hold up the bill. If there is a disposition on the part of the Senate to approve it in its amended form, so be it. But I express the hope that in due time, in the January coming, there will be a bill introduced on this subject, that the chairman of the Committee on Government Operations will hold the hearings contemplated and that one of the products of any legislation that would be forthcoming as a result of those hearings, would result in a repeal of the law which establishes this commission as contained in title 2 of this bill. I think that would make a better, tighter operation for properly legislating, rather than spreading the subject out in such a fashion that it will take an interminable length of time, in addition to the useless expense which would otherwise be incurred.

I yield the floor.

EXHIBIT 1

STAFF MEMORANDUM

Re S. 4016, a bill to protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

Set forth below is an analysis of the fundamental Constitutional issues raised by the above-noted bill.

I. EMINENT DOMAIN

S. 4016 would condemn all the papers and materials which constitute the Presidential historical material of Richard Nixon as defined by Title 44, U.S.C. § 2101 as well as all tape recordings of all conversations which were caused to be recorded by a Federal officer or employee and which involve either Richard Nixon or any Federal employee between January 20, 1969 and August 9, 1974.

The power of eminent domain is said to exist as an attribute of sovereignty separate from any written constitution. *Boom Co* v. *Patterson*, 98 U.S. 403, 406 (1878). The *Federal* power of eminent domain, however, is limited by the grants of power in the Constitution, so that property may be taken only for the effectuation of a granted power. *United States* v. *Gettysburg Electric Ry. Co.*, 160 U.S. 668, 679 (1896). This is but a recognition that the Federal government is a government of limited powers, and for property to be taken for a "public use" by the Fedreal government, that public use must be one within the enumerated powers of the Federal government.

Admittedly, the interpretation of "public use" for purposes of Federal condemnation has been broadly construed, *United States ex rel. TVA* v. *Welch*, 327 U.S. 546, 552 (1946), but this is only to give effect to the Necessary and Proper Clause. *See* Corwin, *The Constitution* 336 (1973). While certain "Presidential historical materials" might be justifiedly obtained by eminent domain because of a peculiarly public interest, e.g., materials necessary for the ongoing functions of government, material relating to the national security, etc., S. 4016 does not attempt to distinguish between such necessary materials and other unnecessary materials. Yet the power of eminent domain as a sovereign attribute only extends to that property which is necessary to advance the government's legimitate public interest. *See United States* v. *Lynah*, 188 U.S. 445, 465 (1903).

Clearly the most personal papers of former President Nixon would not be necessary for any legitimate public use, for Presidential "historical material," as defined by 44 U.S.C. § 2101, would include not only official papers, but Christmas cards, personal letters, personal diaries, etc. Therefore, because all tapes and all Presidential historical materials are condemned by S. 4016, it would seem that the power of eminent domain is being used here, at least in part, for other than a public use. This threatens the constitutionality of the whole bill despite the fact that the proposal contains the customary severability clause. To cure this deficiency it would appear that the condemnation of Presidential materials and tapes must be limited to those particular materials which are necessary for some specific reason.

This exercise of eminent domain in S. 4016, moreover, is of a novel type—extending to literary property, personal papers, and the most personal of possessions, indeed the innermost thoughts of Richard Nixon as he expressed or recorded them. Not only is the subject matter of the condemnation novel, but the extent of it is unique—extending to every scrap of paper produced in the White House, personal or official, whether existing there as a home or office, for over five years. This is without precedent and contemplates an invasion of privacy unparalleled in Congressional history.

In stark contrast to the wholesale condemnation proposed by S. 4016 is the approach used by Public Law 89-318, 79 Stat. 1185 (1965). There evidence accumulated by the Warren Commission was to be considered by the Attorney General in order to determine which particular items of evidence were necessary for the United States to retain. The items so determined were condemned, and provision was made for just compensation. This exercise of eminent domain demonstrates a responsible and constitutional approach of condemning only that property *necessary* for the public use.

II. EXECUTIVE PRIVILEGE

A. Executive Privilege as a Constitutional Right.

In *United States* v. *Nixon*, —— U.S. —— (1974) 42 U.S.L.W. 5237, 5244 (decided July 24, 1974), the Supreme Court unanimously recognized the existence of a constitutionally based Executive Privilege.

Executive privilege may be considered to have three aspects—first, with reference to a judicial demand for information or materials; second, with reference to a Congressional demand; and third, with reference to the public at large. Further, the judicial demand aspect may be separated into cases where the demand is for evidence relevant to a criminal trial, *e.g., United States* v. *Nixon, supra*, and cases where the demand is merely for discovery material in a civil case, *e.g., Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F. 2d 788 (D.C. Cir. 1971); *Nader* v. *Butz*, 60 F.R.D. 381 (D.D.C. 1973), *appeal pending*. The thrust of *Nixon* was that in a criminal case if the evidence was indeed determined to be relevant after *in camera* inspection, then the privilege would be defeated. In *Seaborg*, however, a civil case, the *in camera* inspection was merely to determine if the privilege was rightfully claimed, in which case the material would remain confidential and the privilege would be upheld.

Congressional demands for material also may fall into two categories. The first would be a normal committee request, demand, or subpoena for material which may be rejected on the basis of Executive Privilege where it is deemed by the President that the production of such material would be detrimental to the functioning of the Executive Branch. This at least has been the consistent practice by practically every administration and acceded to by Congress. This should be contrasted with a demand for material pursuant to an impeachment inquiry, which some presidents have acknowledged would require production of any and all executive material. *See e.g.*, Washington's statement, 5 Annals of Congress 710–12 (1796). Finally, there is the demand by statute for general public access to information. This last is the situation presented by S. 4016.

The analysis of the different situations in which Executive Privilege may be invoked and its differing weight and treatment is instructive, for it, not surprisingly, reveals that the more particularized and the more compelling the demand for material is, the less weight Executive Privilege has. Thus, in *Nixon*, the Court acknowledged that a general claim of privilege depends "on the broad, undifferentiated claim of public interest in the confidentiality of such conversations . . . ," 42 U.S.L.W. at 5244, and it was for that reason that the privilege would fail against a showing of particularized need in a criminal trial. The importance of that public interest in confidentiality, nevertheless, was emphasized. "The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution. [citing cases]." *Id.* at 5245. The conclusion, therefore, is clear that absent such a particularized need for evidence in a criminal trial, the public interest in fostering free and frank discussion, by protecting it with confidentiality, would serve to sustain a claim of Executive Privilege. The device of *in camera* inspection reflects this understanding. Yet S. 4016 would jettison this acknowledged public interest and authorize general public access to all presidential conversations without any showing of need for that access, particularized or otherwise.

B. Disclosure of Privileged Material.

S. 4016 contemplates that former President Nixon's presidential tapes and materials shall be made available "for use in any judicial proceeding or otherwise subject to court subpoena or other legal process." (Section 3(b)). Moreover, Section 6 of the Bill directs the Administrator to issue regulations governing access to the tapes so as to authorize him to allow general public access to each and every Presidential conversation recorded between 1969 and 1974 with but three restrictions—if national security is involved, if the Special Prosecutor determines that an individual's right to a fair and impartial trial

On page 8, line 22, delete "104" and insert in lieu thereof the following: "103".

On page 9, line 3, delete "104" and insert in lieu thereof the following: "103".

On page 9, line 1, delete the following: "cur-ent".

On page 9, delete all the language between lines 4 and 15, inclusive.

On page 9, line 18, delete "104" and insert in lieu thereof the following: "103".

On page 10, line 4, delete "105" and insert in lieu thereof the following: "104".

On page 11, delete all the language lines 1 and 7, inclusive, and insert in lieu thereof the following:

"(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1), under procedures comparable to those used to provide public access to the materials of recent former Presidents;"

On page 11, line 5, delete after "(1)" the remainder of the line as well as all of line 6 and "of former Presidents" on line 7.

On page 12, line 6, add after "power of the" the following: "Senate and the";

On page 12, line 7, after "Representatives", insert the following: "respectively,";

On page 12, line 8, delete "the House", and insert in lieu thereof the following: "each House, respectively,";

On page 12, delete the language in line 12 and insert in lieu thereof the following: "of either House to change such rules (as far as relating to the procedures of that House) at";

On page 12, line 14, after "rule of" delete "the" and insert in lieu thereof the following: "that";

On page 12, line 15, delete "in the House of";

On page 12, line 16, delete "Representatives;"

On page 12, line 17, after "House", insert the following: "or by the President of the Senate, as the case may be";

On page 13, line 10, delete "in the House of Representatives".

On page 13, line 24, delete the period (".") and insert in lieu thereof the following: ";

"(d) the provisions of this title shall not in any way affect the rights, limitations or exemptions applicable under the Freedom of Information Act, 5 U.S.C., sec. 552, *et seq.*"

On page 14, delete all the language between lines 2 and 13, inclusive, and insert in lieu thereof the following:

"SEC. 105. (a) The United States District Court for the District of Columbia shall have the exclusive jurisdiction to hear challenges to the legal or constitutional validity of this title or of any regulation issued under the authority granted by this title, and any action or proceeding involving the question of title, ownership, custody, possession, or control of any tape recording or material referred to in section 101 or involving payment of any just compensation which may be due in connection therewith. Any such challenge shall be treated by the court as a matter requiring immediate consideration and resolution, and such challenge shall have priority on the docket of such court over other cases."

On page 14, between lines 21 and 22, insert the following new subsection:

"(c) If a final decision of such court holds that any provision of this title has deprived an individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by that court."

On page 14, delete the language on lines 22 through 25, inclusive;

On page 15, delete the language on lines 1 through 9, inclusive.

On page 15, line 11, delete "108" and insert in lieu thereof the following: "106".

Mr. ERVIN. Mr. President, I accept the Senator's amendment as a substitute for that part of my motion which asks that the Senate concur in the House-passed amendment in the nature of a substitute, subject to the following amendment, and set out there the amendment offered by the Senator from Wisconsin?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. As I understand it, the amendment that the Senator from Wisconsin sent to the desk will be considered as a substitute for the amendment proposed a few moments ago by the Senator from North Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion of the Senator from North Carolina concurring in the House amendment with the amendments of the Senator from Wisconsin.

The motion was agreed to.

Mr. ERVIN. Does the Senator have any further statement to make on this matter?

Mr. HRUSKA. Mr. President, what is the pending business?

The PRESIDING OFFICER. The action is concluded on that matter.

Mr. HRUSKA. The amendment is agreed to, and we are now on the bill itself, with amendments?

Mr. ERVIN. Mr. President, we have concurred in the House amendment subject to this amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. Mr. President, I yield whatever time I have to the Senator from Nebraska.

Mr. HRUSKA. I thank the Senator.

Mr. President, I have just a few brief remarks that cover two points. One is a reiteration of my opposition to title I of the bill proper. The second involves the ill-advised title II.

When S. 4016 was before the Senate earlier this session, I made known my opposition to the bill at that time because of six rather fundamental constitutional issues which were presented by the measure.

The first problem posed by the bill related to the novel type of eminent domain which it contemplates. While Congress might be justified in obtaining by eminent domain those particular materials which are necessary for specific reasons of public interest, S. 4016 would authorize a wholesale taking of literary property, personal papers, and the most personal of possessions of Richard Nixon as he expressed or recorded them. Included would be not only official papers, but Christmas cards, personal letters, diaries, and the like. This view of eminent domain is without precedent and contemplates an unparalleled invasion of privacy.

The second issue involved the appropriate scope of executive privilege. In this regard, I noted that S. 4016 did not abide by the Court's teaching in the case of United States against Nixon with respect to judicial demands for Presidential materials and with respect to its provision for general public access to all materials except national security information. In these particulars, the bill appeared to be designed to cater more to the curiosity of the public than constitutional tenets.

The third issue which I aired was the potential for inadvertent abridgment of the constitutionally guaranteed right of privacy of all persons whose conversations were the subject of the tape recordings to be condemned and made public by the bill. My reading of section 6 of the bill led me to the conclusion that the broad delegation of authority to the Administrator of General Services to release Presidential tapes provides absolutely no protection for privacy rights and thus violates the requirements for legislation in this area.

Three more issues of constitutional dimension were also raised. How does the bill impact upon the first amendment right to unfettered speech? Is it violative of former President Nixon's fifth amendment privilege against self-incrimination? Does the measure constitute a bill of attainder expressly prohibited by article I, section 9, clause 3, of the Constitution?

Mr. President, for the benefit of my colleagues, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a memorandum which was reprinted in the RECORD during the consideration of this bill in October, and which discusses each of these issues. It concludes that the bill simply does not pass constitutional muster.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HRUSKA. S. 4016 was originally conceived in great haste within the Government Operations Committee following the pardon of former President Nixon.

However, in the intervening months we have witnessed developments that have operated to insure the security of the former President's tapes and materials and to provide necessary access for law enforcement purposes. Indeed, it might be that further refinements of the rules governing access to these materials will be forthcoming. Surely there is no reason for precipitous action at this time.

Mr. President, title I of the bill which is the subject of the Senate's attention at this time mirrors S. 4016 as it passed the Senate earlier in October. Because of the serious constitutional issues raised, I am fundamentally opposed to the passage of this measure.

Moreover, the major substantive change that the House has made in this bill—the addition of title II—actually makes it even more objectionable.

Title II would create a "Public Documents Commission" composed of 17 members to study problems concerning "the control, disposition, and preservation" of records "produced by or on behalf of Federal officials," including legislators and judges.

It is clear that there is a need for rules governing access to the materials of all principal officials within the Government. These rules should be well-considered, should protect against political exploitation and unnecessary invasions of privacy and should apply evenhandedly

"(B) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House;

"(C) one Member of the Senate appointed by President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

"(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

"(E) one Justice of the Supreme Court, appointed by the Chief Justice of the United States;

"(F) one person employed by the Executive Office of the President or the White House Office, appointed by the President;

"(G) three appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are specially qualified to serve on the Commission by virtue of their education, training, or experience;

"(H) one representative of the Department of State, appointed by the Secretary of State;

"(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

"(J) one representative of the Department of Justice, appointed by the Attorney General;

"(K) the Administrator of General Services (or his delegate);

"(L) the Librarian of Congress;

"(M) one member of the American Historical Association, appointed by the counsel of such Association;

"(N) one member of the Society of American Archivists, appointed by such Society; and

"(O) one member of the Organization of American Historians, appointed by such Organization.

"(2) No more than two members appointed under paragraph (1) (G) may be of the same political party.

"(b) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

"(d) Members shall be appointed for the life of the Commission.

"(e) (1) Members of the Commission shall serve without pay.

"(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703(b) of title 5, United States Code, except that per diem in lieu of subsistence shall be paid only to those members of the Commission who are not full-time officers or employees of the United States or Members of the Congress.

"(f) The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a) (1) (G).

"(g) The Commission shall meet at the call of the Chairman or a majority of its members.

"§ 3319. Director and staff; experts and consulants

"(a) The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).

"(b) The Commission may appoint and fix the pay of such additional personnel as it deems necessary.

"(c) (1) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

"(2) In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.

"(b) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under section 3315 through 3324 of this title.

"§ 3320. Powers of Commission

"(a) The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem desirable.

"(b) When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

"(c) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

"§ 3321. Support services

"(a) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services and assistance as the Commission may request.

"(b) The Archivist of the United States shall provide to the Commission on a reimbursable basis such technical and expert advice, consultation, and support assistance as the Commission may request.

"§ 3322. Report

"The Commission shall transmit to the President and to each House of the Congress a report not later than March 31, 1976. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation, administrative actions, and other actions, as it deems appropriate.

"§ 3323. Termination

"The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.

"§ 3324. Authorization of appropriations

"There is authorized to be appropriated such sums as may be necessary to carry out section 3315 through section 3324 of this title.".

TECHNICAL AMENDMENT

SEC. 203. The table of sections for chapter 33 of title 44, United States Code, is amended by adding at the end thereof the following new items:

"3315. Definitions.
"3316. Establishment of Commission.
"3317. Duties of Commission.
"3318. Membership.
"3319. Director and staff; experts and consultants.
"3320. Powers of Commission.
"3321. Support services.
"3322. Reports.
"3323. Termination.
"3324. Authorization of appropriations.".

Mr. ERVIN. Mr. President, I move that the Senate concur in the House amendment in the nature of a substitute, with the following amendment:

That section 107, which appears on lines 23, 24, and 25 of page 14, and lines 1 through 9, inclusive, on page 15, be stricken, and that section 108, which appears on line 11 of page 15 of the House-passed bill, be renumbered as section 107.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield.

Mr. NELSON. I have an amendment that encompasses the amendment of the Senator from North Carolina plus a number of technical changes that should be included. They have been supplied to the Senator from Nebraska.

I am wondering whether it would be tidier if the Senator withdrew his amendment and I sent this amendment to the desk, of which the Senator from Nebraska has a copy, which amendment would do precisely what the Senator from North Carolina proposes in his amendment, plus a number of technical amendments that are acceptable on the House side.

Mr. ERVIN. In other words, the Senator's amendment would cover the same ground I have covered and contains some additional matters?

Mr. NELSON. That is correct.

Mr. ERVIN. The Senator, in effect, suggests that I amend my motion so as to move that the Senate concur in the House-passed amendment in the nature of a substitute, subject to the amendment phrased as the Senator from Wisconsin has phrased it.

Mr. NELSON. Yes, which embraces the amendment which the Senator has just proposed, along with several other technical points.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. NELSON. Yes.

Mr. HRUSKA. This matter has been discussed informally with the Senator from Nebraska This group of amendments submitted by the Senator from Wisconsin does include the amendment just described by the Senator from North Carolina. Because of the cross-references, it would be more advantageous to consider these technical amendments together with the amendments proposed by Senator ERVIN en bloc, so that there will be proper sequence and proper cross-referencing.

I have no objection to the consideration of the amendments on that basis.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, line 4, after the word "as" add the following: "hereafter".

On page 8, line 21, after the word "purpose", delete the comma (",") and add the following: "which is consistent with the provisions of this title, subsequent and";

the tape recordings and other materials referred to in section 101. Such regulations shall take into account the following factors:

(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";

(2) the need to make such recordings and materials available for use in judicial proceedings;

(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings, to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials relating to the Presidency of Richard M. Nixon which have general historical significance, and which are not likely to be related to the need described in paragraph (1), in a manner which is consistent with procedures which have been used to provide public access to materials of former Presidents; and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

(b)(1) The regulations proposed by the Administrator in the report required by subsection (a) shall take effect upon the expiration of ninety legislative days after the submission of such report, unless such regulations are disapproved by a resolution adopted by either House of the Congress during such period.

(2) The Administrator may not issue any regulation or make any change in a regulation if such regulation or change is disapproved by either House of the Congress under this subsection.

(3) The provisions of this subsection shall apply to any change in the regulations proposed by the Administrator in the report required by subsection (a). Any proposed change shall take into account the factors described in paragraph (1) through paragraph (7) of subsection (a), and such proposed change shall be submitted by the Administrator in the same manner as the report required by subsection (a).

(4) Paragraph (5) is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such it shall be considered as part of the rules of the House, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of the House of Representatives to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House.

(5)(A) Any resolution introduced in the House of Representatives under paragraph (1) shall be referred to a committee by the Speaker of the House.

(B) If the committee to which any such resolution is referred has not reported any resolution relating to any regulation or change proposed by the Administrator under this section before the expiration of sixty calendar days after the submission of any such proposed regulation or change, it shall then be in order to move to discharge the committee from further consideration of such resolution.

(C) Such motion may be made only by a person favoring the resolution, and such motion shall be privileged. An amendment to such motion is not in order, and it is not in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(D) If the motion to discharge is agreed to or disagreed to, such motion may not be renewed.

(E) When the committee has reported, or has been discharged from further consideration of, a resolution introduced in the House of Representatives under paragraph (1), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be privileged. An amendment to such motion is not in order, and it is not in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(6) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(c) The provisions of this title shall not apply, on and after the date upon which regulations proposed by the Administrator take effect under subsection (b), to any tape recordings or other materials given to Richard M. Nixon, or his heirs, pursuant to subsection (a)(7).

JUDICIAL REVIEW

SEC. 106. (a) The United States District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of any provision of this title or of any regulation issued under the authority granted by this title. Such challenge shall be heard by a district court of three judges constituted under the procedures established by section 2284 of title 28, United States Code, with the right of direct appeal to the United States Supreme Court. Any such challenge shall be treated by the district court of three judges and the Supreme Court as a priority matter requiring immediate consideration and resolution.

(b) If, under the procedures established by subsection (a), a judicial decision is rendered that a particular provision of this title, or a particular regulation issued under the authority granted by this title, is unconstitutional or otherwise invalid, such decision shall not affect in any way the validity or enforcement of any other provision of this title or any regulation issued under the authority granted by this title.

PARTICIPATION IN CERTAIN COURT ACTIONS

SEC. 107. The Committee on Government Operations of the Senate and the Committee on House Administration of the House of Representatives may, acting jointly or separately appoint counsel to intervene in any case or proceeding relating to—

(1) the ownership, custody, use, or compensation for any taking, of tape recordings and other materials referred to in section 101, or any other similar right to or in such recordings and materials; or

(2) any challenge to the legal or constitutional validity of any provision of this title or of any regulation issued under the authority granted by this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 108. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

TITLE II—PUBLIC DOCUMENTS COMMISSION

SHORT TITLE

SEC. 201. This title may be cited as the "Public Documents Act".

ESTABLISHMENT OF STUDY COMMISSION

SEC. 202. Chapter 33 of title 44, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3315. Definitions

"For purposes of this section and section 3316 through section 3324 of this title—

"(1) the term 'Federal official' means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;

"(2) the term 'Commission' means the National Study Commission on Records and Documents of Federal Officials; and

"(3) the term 'records and documents' shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.

"§ 3316. Establishment of Commission

"There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.

"§ 3317. Duties of Commission

"It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—

"(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;

"(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;

"(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;

"(4) the recordkeeping procedures of the White House Office, with a view toward establishing names to determine which records and documents are produced by or on behalf of the President;

"(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;

"(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;

"(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and

"(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

§ 3318. Membership

"(a)(1) The Commission shall be composed of seventeen members as follows:

"(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

greatest example on earth. A Ford-Rockefeller team is right for this Nation and for our people.

I believe the statement I made on August 20 has been confirmed by everything that has happened since then, taken together as a unit.

I was very interested, Mr. President, to find this evaluation confirmed also by a discussion of four prominent newsmen on Martin Agronsky's show regarding the Rockefeller nomination this last weekend. Martin Agronsky, himself a very distinguished newsman, Hugh Sidey, of Time magazine, George Will, and Carl Rowan, columnists, agreed that Nelson Rockefeller has come through the confirmation proceedings of both the Senate Rules and Administration Committee and the House Judiciary Committee with even greater respect than he commanded just 6 weeks ago.

That is quite a tribute from such high-powered newsmen for a nominee who has been very, very thoroughly investigated, to say the least, as evidenced by these hearings.

And the editorial in the Washington Post, to which Senator MATHIAS referred, certainly lends point and emphasis to the comments of these newsmen that I just referred to.

Mr. President, a few other points:

First, Governor Rockefeller has a unique quality in attracting high-class personnel, personnel of skill and ability. After what this Nation has been through in respect to seedy politics in the horrendous Watergate scandals, you need in Goverment the kind of figures who will attract decent and honorable men and women of skill to Government with a feeling of confidence that they will not be besmirched in the process.

President Ford, with that clean, honorable, and straightforward look and attitude and feeling, which he has so richly communicated to our country, and now Nelson Rockefeller, with the tremendous skill and standing which he has, will materially help us at a time when men and women of talent and quality may be extremely reluctant to serve in those high places in Government which seems to have been the most jeopardized in these dreadful scandals.

Second, we are faced with enormous challenges of an economic character. We are now in the grip of both inflation and recession, an almost unmatched situation in our world.

In addition, there are widespread fears voiced from the most responsible sources that we are on the greased skids to a worldwide depression.

How critically important, therefore, it is that a man connected with a family which stands so signally high in the view of the private sector in the United States be enlisted in such a high place in the service of the Nation at this time.

Also, we are in very serious difficulties abroad. The Middle East situation is very tense, involving, as one of its effects, another danger of an oil embargo.

Cyprus is a battlefield engulfing two of the NATO partners and compromising the whole southern flank of NATO. Our SALT negotiations, the reduced nuclear armaments, are just getting off the ground with the Soviet Union in a very sensitive way. All of us recall problems with previous new Presidents, even Presidents who later proved themselves to be superb men, like Harry Truman. In the early days they had to go through the rigors of Potsdam and similar postwar negotiations which tried not only their mettle but their standing.

Considering Nelson Rockefeller's standing in this field in the world, I consider it to be an immensely strengthening element to our country in its negotiations and in the future actions in these foreign policy matters to have them in its service.

Finally, Mr. President, I would like to say a few words about Nelson Rockefeller's accomplishments, highlighted and made sharper even by the record of his own family, as Governor of New York. Like any other incumbency, it was by no means an uninterrupted stream of successes.

Mr. President, on the whole, it was a splendid incumbency as Governor of New York—elected four successive times—and also demonstrated certain unique qualities which I think should commend the nominee to us very strongly.

For one, Nelson Rockefeller was very hard-headed about money and did not fear, when he felt that it was essential to spend, and the State legislature was with him, to go to the people in order to be sustained in activities which were always difficult for a governor to go to the people on—that is, higher taxes or bond issues. He was ready to persuade and able to persuade the people of New York, in the most farsighted way, that the measures he recommended were so worthwhile as to deserve financial sacrifice on their part, which they made.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. COOK. Mr. President, I yield 2 additional minutes to the Senator.

Mr. JAVITS. The lead which we have taken, for example, in prefinancing clean water, with the assistance and powerful support of big bond issues voted by the people, is the kind of enterprise and the kind of leadership which we want in the executive department of the United States, in which Governor Rockefeller would function.

Finally, his unusual devotion to education and the arts have made New York a true exemplar of leadership in terms of education. California was miles ahead of us when Governor Rockefeller took over in 1958. In that intervening period, the State University of New York has been built up into one of the most splendid State educational institutions among all the 50. This is his monument.

He made of the New York State Arts Council a pilot plant operation which has now carried with it our much larger operation in the Federal Government—but when it began, a much smaller operation—enormously profiting, as we brought Nancy Hanks to head it, out of New York, from the gifted and enterprising leadership of Governor Rockefeller in this field.

So, Mr. President, for all these reasons, without gilding any lilies and at the same time complimenting enormously and speaking of the debt we all owe to the committees which so thoroughly investigated the nominee, I commend to the Senate the confirmation of Nelson Rockefeller's nomination to be Vice President of the United States.

The PRESIDING OFFICER (Mr. HELMS). The time of the Senator has expired.

Who yields time?

Mr. COOK. I yield myself 3 minutes.

Mr. President, relative to a remark which was made by Senator ABOUREZK, there is no point in my debating the various points that he raised, but he referred to defense spending and the attitude of the Governor of New York.

I should like to read a colloquy which the nominee had with Senator PELL, which begins on page 151 of the record:

Senator PELL. So the same type procedure might be followed here?

Mr. ROCKEFELLER. I really haven't thought it through but at the moment that's my sort of reaction to what you want.

Sentaor PELL. On another subject. A few years ago our Nation began turning its thoughts to the Bicentennial celebration. We hope it is going to be a humdinger, better than the one in 1876. But so far as it looks it hasn't taken off the ground as it should, being plagued wtih problems at the national level and in the various States. I'm not thinking of your own and my State which are well run.

What are your thoughts in regard to the Bicentennial in 1976 in regard to your Vice Presidential role. Would you be able to give it some thought?

Mr. ROCKEFELLER. To be perfectly frank, I hadn't thought about that. I would presume that would depend on the President—his desires; I'd conform to whatever was on his mind.

Sentaor PELL. What are your views, Governor Rockefeller, with regard to the public financing of campaigns for Federal elected office; for President, Vice President, for Senators, and Congressmen?

Mr. ROCKEFELLER. Well, of course, they have some very interesting possibilities. One has to think, as one who has participated in financing of campaigns. I have a little concern myself as to how you handle the question of other than the two major parties—how you would handle the campaigns of other candidates.

In our State, with 50,000 signatures, you can get on the ballot as a gubernatorial candidate. Now if the State were to finance the campaigns of all candidates who got 50,000 signatures I think that we'd go like France has gone, I think we'd have 15, 17 parties and no longer would have the tremendous strength of the two-party system.

I'm sure provisions can be made to protect against that. But in relation to public financing, this is the item that concerns me most.

Senator PELL. The public financing would be for the two major parties, and minority parties would only receive funds in proportion to the votes received in the elections so you wouldn't have the same amount being given to minor and major parties.

Mr. ROCKEFELLER. Certainly the subject is a tremendously difficult one and I think that perhaps on an experimental basis that this is an area that should be explored and very carefully and that experimentation undertaken on maybe a trial basis to see.

The real problem is in campaigning and I've campaigned snice 1968 and the costs have gone just straight up like this because of television time. So that I assume when you talk about public financing then you're talking, thinking about also how you finance time on television. And I suppose in England they give you time on television.

Senator PELL. That is another approach that has been suggested. But I think the

bills before us now—maybe you're familiar with the Senate bill and House bill on campaign financing.

Mr. ROCKEFELLER. I'm not familiar in detail to tell you the truth, and therefore I'm hesitant to express an opinion that has any definite character to it because I really have not had a chance to study those.

Senator PELL. On another subject. This is basically a philosophical one. I think there ought to be a reduction of expenditures in the Federal budget.

The question is, where do the reductions come from, the hardware, defense and space sector, or the so-called human sector, education and health?

What is your view as to where the main thrust of these reductions should come from? They've got to come from one area or another because there are only the two principal areas.

Mr. ROCKEFELLER. Well, I suppose, first, it's a policy decision as to whether a cut is to be made; and secondly, how big a cut; and thirdly, then to examine every department and see where those cuts can be made, on a very careful analysis of the work being done, its essentiality, its priority. It is a very difficult thing always to cut back. I had to face it in New York, and the State payroll was reduced by 11,000 employees, which for a State was an awful lot of employees. And we would cut back on programs, in all areas, and postponed and so forth. And it can be done and it takes tremendous political muscle to do it.

Senator PELL. Would you be for an evenhanded cut then, not one sector more than the other? I think my recollection is that President Ford said there should be no reduction in defense expenditures. That was suggested and some disagreed with it. You would believe that the reduction should be on an evenhanded basis?

Mr. ROCKEFELLER. I would think really if it were possible to do it, it should be done on the basis of least harm to the service and function of the particular department or agency which was under review so that if it is national defense, how do we preserve the strength of our national defense; what are areas where activities could be reduced or cut which are not of high priority character? And other programs, programs that have been on the books a long time that perhaps today are not as important as new areas which are emerging.

Senator PELL. But basically, as you know, a dollar spent on defense and space produces far less in human benefits than that spent in health and education. Would that relate to——

Mr. ROCKEFELLER. Except as you relate it to the problem of freedom. I have to think fundamental to everything is freedom.

Senator PELL. Freedom at home as well as abroad?

Mr. ROCKEFELLER. Freedom at home and abroad.

Senator PELL. Thank you.

Finally, in connection with Cuba, there seems to be a feeling that perhaps we should improve and regularize our relationship. Do you have any views in that regard?

Mr. ROCKEFELLER. I have not in recent years discussed the question of Cuba, not since 1969. In 1969 when I was on that trip for the President and went to 20 countries and talked to the heads of state, I got a pretty good feel at that time as to the attitude of the other American republic leaders about Cuba. At that time there was very little sentiment for reestablishing relations. From what I read in the papers, there seems to be some softening of that position, and I would assume that this is a question which would be taken up in discussion with the heads of other states to get a consensus position.

Senator PELL. Thank you very much.

The CHAIRMAN. Thank you.

Mr. Rockefeller, Senator Allen has returned and we will let the hearings go right ahead and proceed with the questions. Senator Cook will be the next one up as soon as he returns from the vote.

Mr. President, I suggest the absence of a quorum.

Mr. CANNON. On my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CANNON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. I yield 5 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Chair inquires whether this is to be in legislative session.

LEGISLATIVE SESSION

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate go into legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 4016.

The PRESIDING OFFICER (Mr. HELMS) laid before the Senate the amendment of the House of Representatives to the bill (S. 4016) to protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes, as follows:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Presidential Recordings and Materials Preservation Act".

TITLE I—PRESERVATION OF PRESIDENTIAL RECORDINGS AND MATERIALS

DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL MATERIALS

SEC. 101. (a) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, any Federal employee in possession shall deliver, and the Administrator of General Services (hereinafter in this title referred to as the "Administrator") shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which—

(1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government;

(2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and

(3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

(b) (1) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, the Administrator shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginnnig January 20, 1969, and ending August 9, 1974.

(2) For purposes of this subsection, the term "historical materials" has the meaning given it by section 2101 of title 44, United States Code.

AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

SEC. 102. (a) None of the tape recordings or other materials referred to in section 101 shall be destroyed, except as may be provided by law.

(b) Notwithstanding any other provision of this title, any other law, or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, the tape recordings and other materials referred to in section 101 shall, immediately upon the date of enactment of this title, be made available, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, for use in any judicial proceeding or otherwise subject to court subpena or other legal process. Any request by the Office of Watergate Special Prosecution Force, whether by court subpena or other lawful process, for access to such recordings or materials shall at all times have priority over any other request for such recordings or materials.

(c) Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 101 for any purpose, subject to the regulations which the Administrator shall issue pursuant to section 104.

(d) Any agency or department in the executive branch of the Federal Government shall at all times have access to the tape recordings and other materials referred to in section 101 for current lawful Government use, subject to the regulations which the Administrator shall issue pursuant to section 104.

COMPENSATION

SEC. 103. If any court of the United States decides that any provision of this title has deprived any individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by an appropriate court of the United States. However, the provisions of this title shall not be construed as making any determination with respect to any private property right of title to tape recordings and other materials referred to in section 101, if any such right existed prior to the date of enactment of this title.

REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS AND OTHER MATERIALS

SEC. 104. The Administrator shall issue at the earliest possible date such regulations as may be necessary to assure the protection of the tape recordings and other materials referred to in section 101 from loss or destruction; and to prevent access to such recordings and materials by unauthorized persons. Custody of such recordings and materials shall be maintained in Washington, District of Columbia, or its metropolitan area, except as may otherwise be necessary to carry out the povisions of this title.

REGULATIONS RELATING TO PUBLIC ACCESS

SEC. 105. (a) The Administrator shall, within ninety days after the date of enactment of this title, submit to each House of the Congress a report proposing and explaining regulations that would provide public access to